Supreme Court, U.S.
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No. 94-382

In The

Supreme Court of the United States

October Term, 1994

MICHAEL C. COLLINS, LESLIE COLLINS, and BARBARA COLLINS,

Petitioners,

v.

SCHWEITZER, INC., and WORLD WIDE SKI CORP dba NASTAR,

Respondents.

On Petition For A Writ Of Certiorari To The United States Court Of Appeals For The Ninth Circuit

RESPONDENTS' BRIEF IN OPPOSITION

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REASONS FOR DENYING THE PETITION FOR A WRIT OF CERTIORARI

I. THERE ARE NO SPECIAL OR IMPORTANT REASONS FOR GRANTING A WRIT

This is a diversity of citizenship case, the outcome of which is governed by Idaho law. Petitioner, Michael Collins injured himself while skiing at Schweitzer Mountain Resort in Idaho.[1] An accomplished and experienced ski racer, Collins struck a chairlift tower after completing an amateur ski race.

The applicable substantive law is an Idaho statute passed in 1979 entitled: "Responsibilities and Liabilities of Skiers and Ski Area Operators," Idaho Code §§6-1101 through 6-1109 (the "Act"). The court of appeals relied upon an interpretation of the Act by the Idaho Supreme Court in *Northcutt v. Sun Valley*, 117 Idaho 351, 787 P.2d 1159 (1990).

No issue of national importance is raised by the petition. No conflicts between the circuits exists or is even asserted. Other state courts of last resort have construed their own skiing responsibility statutes. But, because each state's statute has unique language it would be wrong to assert that there are conflicts among these state courts of last resort.

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[1] Neither Schweitzer, Inc. nor World Wide Ski Corp. (NASTAR) have parent companies, subsidiaries or affiliates that have issued shares to the public.

II. THE IDAHO SKIER STATUTE DOES NOT VIOLATE THE EQUAL PROTECTION CLAUSE

Petitioners contend that the Act is unconstitutional because it is not rationally related to its stated purpose and denies all skiers the equal protection of the laws. Petitioners go so far as to argue that the Act grants "blanket immunity" to ski area operators and "effectively precludes liability on any basis for a ski area operator." (Pet. pp. 13, 20). The court of appeals rejected petitioners' argument, finding specifically that the Act does not grant "blanket immunity" to ski area operators. *Collins v. Schweitzer*, 21 F.3d 1491, 1494 n.7 (9th Cir. 1994).

The decision of the court of appeals is correct. The Act was passed in recognition of the fact that there are inherent risks in the sport of skiing which should be understood by each skier and which are essentially impossible to eliminate. The purpose of the statute is to define the areas of responsibility and affirmative acts for which ski area operators shall be liable and to define those risks which the skier expressly assumes and for which there can be no recovery. Idaho Code §6-1101.

Idaho Code §§6-1103 and 6-1104 define areas of responsibility for ski area operators which are all related to safety of the skiing public.[2] Idaho Code §6-1103(10)

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[2] Those specific duties consist of marking trail maintenance vehicles and furnishing them with flashing or rotating lights; marking snowmaking equipment located on slopes and trails; marking the entrance to each slope or trail with a symbol for its relative degree of difficulty and marking closed trails or slopes; maintaining trail boards at prominent locations describing the network and relative degree of difficulty of ski trails and

creates a duty for the ski area operator "not to intentionally or negligently cause injury to any person." It also provides that, except for the duties described above, the operator shall have no duty to eliminate, alter, control or lessen the risks inherent in sport of skiing and that no activities undertaken by the operator in an attempt to eliminate, alter, control or lessen such risks shall be deemed to impose on the operator any duty to accomplish such activities to any standard of care. *Id.*

It is true that the Act places the duty upon each skier to ski within the limits of his ability and to maintain reasonable control of speed and course. Idaho Code §6-1106. The Act also requires a skier to assume the risk of and legal responsibility for injury caused by variation in terrain, snow conditions and lift towers. *Id.*

The Idaho Legislature did not mandate that a ski area operator prevent all injuries to skiers. An injured claimant might wish to argue that the terrain should have been smoother, that surface snow or ice should have been broken up and groomed, that bare spots should have been covered, that rocks, trees and other forms of forest growth should have been removed, that lift towers were inappropriately placed in relationship to trails or amateur race courses, etc. However, such arguments are contrary

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whether they are open or closed; placing a conspicuous notice at the top of the trail or slope whenever snowgrooming or snowmaking operations are being undertaken; posting notices of the requirements of the law regarding ski retention devices; providing a qualified ski patrol; posting signs for skiers advising them to seek advice regarding aerial passenger tramways and complying with certain standards regarding tramways. Idaho Code §§6-1103 and 6-1104.

to the plain language and clear meaning of the Act, which, among other things, places the duty to avoid collisions with lift towers upon the skier.

The Idaho Legislature has a legitimate interest in promoting the sport of skiing because it significantly contributes to the economy of Idaho. Idaho Code §6-1101. There is a rational relationship between this legitimate governmental objective and the allocation of risks and responsibilities between ski area operators and skiers. The Idaho Supreme Court has rejected an equal protection challenge to the Act, finding that it is rationally related to a legitimate government interest. *Northcutt v. Sun Valley*, 117 Idaho 351, 356-358, 787 P.2d 1159, 1164-1165.

Equal protection challenges have been made to skiing responsibility acts in other jurisdictions but almost all have been rejected using a rational basis scrutiny. *Pizza v. Wolf Creek Ski Development Corp.*, 711 P.2d 671, 679 (Colo. 1985) (en banc) (act imposes rebuttable presumption that responsibility for collisions by skiers with any person, natural object, or man made structure marked in accordance with act is solely that of skier(s) involved and not that of ski area operator; skier fell and collided into slope, due to variation in terrain); *Schmitz v. Cannonsburg Skiing Corp.*, 170 Mich. App. 692, 694, 428 N.W.2d 742, 743 (1988) (skier collided with tree on slope), *appeal denied*, 432 Mich. 856 (1989); *Grieb v. Alpine Valley Ski Area. Inc.*, 155 Mich. App. 484, 487-90, 400 N.W.2d 653, 655-56 (1986) (skier collided with another skier), *appeal denied*, 428 Mich. 864 (1987).

Most recently in *Lewis v. Canaan Valley Resorts, Inc.*, 408 S.E.2d 634 (W. Va. 1991), the Supreme Court of West Virginia upheld its skiing responsibility act against an equal protection challenge. The court found the holding of *Brewer v. Ski Lift, Inc.*, 762 P.2d 226 (Mont. 1988) to be unpersuasive. The court also noted that the language of the Idaho Act is very similar to that of the West Virginia Act and cited the *Northcutt* decision of the Idaho Supreme Court. In rejecting the equal protection challenge the court announced that its holding was in conformity with nearly all of the courts deciding such challenges to similar legislation. 408 S.E.2d at 639-644.

The court of appeals refused to substitute its own judgment for that of the Idaho Legislature. This Court should do the same. If a classification has some reasonable basis it does not offend the constitution simply because it is not made with mathematical nicety or because in practice it results in some inequity. Perfection in making necessary classifications is neither possible nor necessary. *Schweiker v. Wilson*, 450 U.S. 221 (1981).

III. THIS COURT SHOULD DECLINE THE INVITATION TO REGULATE SKIING AND OTHER RECREATIONAL SPORTING INDUSTRIES

Petitioners invite this Court to grant a writ in order to provide guidelines regarding the regulation of liability in skiing and other sporting industries. (Pet. pp. 23-24). This Court should decline the invitation. Skier responsibility statutes have been passed in at least twenty (20) states. (Pet. App. pp. 88a-152a). Moreover, state courts of

last resort have interpreted their respective unique statutes. Legislatures have passed recreational use statutes in other settings as well.[3] Regulation of recreational sporting industries is a legislative task. Petitioners' invitation for this Court to review this case for the purpose of regulating recreational sports is wholly inconsistent with the principles governing this Court's discretionary jurisdiction on certiorari.

CONCLUSION

For the foregoing reasons, the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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[3] For example, state legislatures have passed legislation providing responsibilities and liabilities for recreational outfitters and guides, Idaho Code §6-1201 *et seq.*; W. Va. Code, 20-3B-1 *et seq.*; operators of certain equestrian activities, Idaho Code §6-1801 *et seq.*; W. Va. Code, 20-4-1 *et seq.*; and landowners who do not charge the public for recreational use of their land, Idaho Code §36-1604; W. Va Code, 19-25-1 *et seq.*